



Journal of the House

State of Indiana

112th General Assembly

Second Regular Session

Sixteenth Meeting Day

Thursday Morning

January 31, 2002

The House convened at 10:00 a.m. with the Speaker in the Chair.

The invocation was offered by Representative Gary Dillon.

The Pledge of Allegiance to the Flag was led by Representative Daniel A. Dumezich.

The Speaker ordered the roll of the House to be called:

T. Adams	Hoffman
Aguilera	Kersey
Alderman	Klinker
Atterholt	Kromkowski
Avery	Kruse
Ayres	Kruzan
Bardon	Kuzman
Bauer	Lawson ☐
Becker	Leuck
Behning	Liggett
Bischoff	J. Lutz
Bodiker	Lytle
Borrer	Mahern
Bosma	Mangus
Bottorff	McClain
C. Brown	Mock
T. Brown	Moses
Buck	Munson
Budak	Murphy
Buell	Noe
Burton	Oxley
Cheney	Pelath
Cherry	Pond
Cochran	Porter
Cook	Reske
Crawford	Richardson
Crooks	Ripley
Crosby	Robertson
Day	Ruppel ☐
Denbo	Saunders
Dickinson	Scholer
Dillon	M. Smith
Dobis	V. Smith
Dumezich	Steele
Duncan	Stevenson
Dvorak	Stilwell
Espich	Sturtz
Foley	Summers
Frenz	Thompson
Friend	Tincher
Frizzell	Torr
Fry	Turner
GiaQuinta	Ulmer
Goodin	Weinzapfel
Grubb	Welch
Harris	Whetstone
Hasler	Wolkins
Herndon	D. Young
Herrell	Yount
Hinkle	Mr. Speaker

Roll Call 67: 98 present; 2 excused. The Speaker announced a quorum in attendance. [NOTE: ☐ indicates those who were excused.]

INTRODUCTION OF BILLS

The following bills were read a first time by title and referred to the respective committees:

- ESB 17** — Cheney, Ayres, C. Brown (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.
- ESB 25** — GiaQuinta, Alderman, Kruzan (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning education.
- ESB 50** — Bauer, Buell (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.
- ESB 52** — Bauer, Espich (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.
- ESB 156** — Sturtz (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration and to make an appropriation.
- ESB 216** — Kuzman, Foley (Public Policy, Ethics and Veterans Affairs)
A BILL FOR AN ACT to amend the Indiana Code concerning technical corrections.
- ESB 363** — Moses, Becker, Stilwell, Borrer (Rules and Legislative Procedures)
A BILL FOR AN ACT concerning natural and cultural resources.
- ESB 399** — Kromkowski, Richardson, Mahern, Behning (Elections and Apportionment)
A BILL FOR AN ACT to amend the Indiana Code concerning the federal decennial census.
- ESB 459** — Avery, Foley, Herrell, Pond (Ways and Means)
A BILL FOR AN ACT concerning family law and juvenile law and to make an appropriation.
- ESB 462** — Klinker, Scholer (Ways and Means)
A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

REPORTS FROM COMMITTEES

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1013, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 28, delete "(a)".

Page 4, delete lines 14 through 16.

(Reference is to HB 1013 as introduced.)

and when so amended that said bill do pass.

Committee Vote: yeas 11, nays 0.

DVORAK, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1051, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 6, delete "Class C" and insert "**Class D**".

Page 1, line 7, delete "Class B" and insert "**Class C**".

Page 2, after line 28, begin a new paragraph and insert:

"SECTION 3. IC 35-45-6-1, AS AMENDED BY P.L.17-2001, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. As used in this chapter:

"Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

"Enterprise" means:

- (1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or
- (2) a union, an association, or a group, whether a legal entity or merely associated in fact.

"Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

"Racketeering activity" means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

- (1) A provision of IC 23-2-1, or of a rule or order issued under IC 23-2-1.
- (2) A violation of IC 35-45-9.
- (3) A violation of IC 35-47.
- (4) A violation of IC 35-49-3.
- (5) Murder (IC 35-42-1-1).
- (6) Battery as a Class C felony (IC 35-42-2-1).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Child exploitation (IC 35-42-4-4).
- (9) Robbery (IC 35-42-5-1).
- (10) Carjacking (IC 35-42-5-2).
- (11) Arson (IC 35-43-1-1).
- (12) Burglary (IC 35-43-2-1).
- (13) Theft (IC 35-43-4-2).
- (14) Receiving stolen property (IC 35-43-4-2).
- (15) Forgery (IC 35-43-5-2).
- (16) Fraud (IC 35-43-5-4(1) through ~~IC 35-43-5-4(9)~~ **IC 35-43-5-4(10)**).
- (17) Bribery (IC 35-44-1-1).
- (18) Official misconduct (IC 35-44-1-2).
- (19) Conflict of interest (IC 35-44-1-3).
- (20) Perjury (IC 35-44-2-1).
- (21) Obstruction of justice (IC 35-44-3-4).
- (22) Intimidation (IC 35-45-2-1).
- (23) Promoting prostitution (IC 35-45-4-4).
- (24) Promoting professional gambling (IC 35-45-5-4).
- (25) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).
- (26) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (27) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (28) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (29) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- (30) Money laundering (IC 35-45-15-5)."

(Reference is to HB 1051 as introduced.)
and when so amended that said bill do pass.

Committee Vote: yeas 10, nays 0.

DVORAK, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1121, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

Committee Vote: yeas 11, nays 0.

LYTLE, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred House Bill 1202, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-2-5-5, AS AMENDED BY P.L.272-2001, SECTION 2, AND AS AMENDED BY P.L.228-2001, SECTION 2, IS AMENDED AND CORRECTED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) Except as provided in subsection (b), on request, law enforcement agencies shall release or allow inspection of a limited criminal history to noncriminal justice organizations or individuals only if the subject of the request:

- (1) has applied for employment with a noncriminal justice organization or individual;
- (2) has applied for a license and criminal history data as required by law to be provided in connection with the license;
- (3) is a candidate for public office or a public official;
- (4) is in the process of being apprehended by a law enforcement agency;
- (5) is placed under arrest for the alleged commission of a crime;
- (6) has charged that his rights have been abused repeatedly by criminal justice agencies;
- (7) is the subject of judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;
- (8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;
- (9) **is employed by an entity that seeks to enter into a contract with a public school (as defined in IC 20-10.1-1-2) or a non-public school (as defined in IC 20-10.1-1-3), if the subject of the request is expected to have direct, ongoing contact with school children within the scope of the subject's employment;**
- (10) has volunteered services at a public school (as defined in IC 20-10.1-1-2) or non-public school (as defined in IC 20-10.1-1-3) that involve contact with, care of, or supervision over a student enrolled in the school;
- ~~(10)~~ **(11)** is being investigated for welfare fraud by an investigator of the division of family and children or a county office of family and children;
- ~~(11)~~ **(12)** is being sought by the parent locator service of the child support bureau of the division of family and children; or
- ~~(12)~~ **(13)** has been convicted of any of the following:
 - (A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
 - (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
 - (C) Child molesting (IC 35-42-4-3).
 - (D) Child exploitation (IC 35-42-4-4(b)).
 - (E) Possession of child pornography (IC 35-42-4-4(c)).
 - (F) Vicarious sexual gratification (IC 35-42-4-5).

- (G) Child solicitation (IC 35-42-4-6).
- (H) Child seduction (IC 35-42-4-7).
- (I) *Sexual misconduct with a minor as a Class A or B felony* (IC 35-42-4-9).
- (J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to the following noncriminal justice organizations:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for *any of the purpose of following purposes*:
 - (A) Employment ~~and~~ with a state or local governmental entity.
 - (B) Licensing.
- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) Any person who uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

SECTION 2. IC 20-5-2-7, AS AMENDED BY P.L.272-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) A school corporation, including a school township, shall adopt a policy concerning criminal history information for individuals who:

- (1) apply for:
 - (A) employment with the school corporation; or
 - (B) employment with an entity with which the school corporation contracts for services;
- (2) seek to enter into a contract to provide services to the school corporation; or
- (3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation;

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

(b) A school corporation, including a school township, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies. A policy adopted under this section may require any of the following:

- (1) The school corporation, including a school township, may request limited criminal history information concerning each applicant for noncertificated employment or certificated employment from a local or state law enforcement agency before or not later than three (3) months after the applicant's employment by the school corporation.
- (2) Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation to request under IC 5-2-5 limited criminal history information or a national criminal history background check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school corporation may require the individual to provide a set of fingerprints and pay any fees required for a national criminal history background check.
- (3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 5-2-5-1(1)) to the school corporation.
- (4) Each individual hired for noncertificated employment may be required at the time the individual is hired to:
 - (A) submit a request to the Indiana central repository for limited criminal history information under IC 5-2-5;
 - (B) obtain a copy of the individual's limited criminal history; and
 - (C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 5-2-5-1(6)) that does not appear on the limited criminal history.

(5) Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's limited criminal history. The failure to answer honestly questions asked under this subdivision is grounds for termination of the employee's employment.

(6) Each individual that:

- (A) seeks to enter into a contract to provide services to a school corporation; or
- (B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in subdivision (4)(A) and (4)(B). ~~The school corporation either may require that the individual or the contractor comply with the procedures described in subdivision (4)(C) or (5): subdivisions (2), (4), and (5). An individual who is employed by an entity that seeks to enter into a contract with a school corporation may be required to provide the consent described in subdivision (2) or the information described in subdivisions (4) and (5) to either the individual's employer or the school corporation.~~ Failure to comply with subdivisions (2), (4), and (5), as required by the school corporation, is grounds for termination of the contract.

(c) If an individual is required to obtain a limited criminal history under this section, the individual is responsible for all costs associated with obtaining the limited criminal history.

(d) Information obtained under this section must be used in accordance with IC 5-2-5-6."

Page 1, line 11, after "of a" insert "**public**".

Page 1, line 11, delete "corporation" and insert "**(as defined in IC 20-10.1-1-2)**".

Page 1, line 13, after "give" insert "**written**".

Page 1, line 16, delete "The" and insert "**Except as provided in subdivision (3), the**".

Page 2, between lines 1 and 2, begin a new line block indented and insert:

"(3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation."

Page 2, line 2, after "corporation" insert ", **presiding officer of the governing body,**".

Page 2, line 5, after "the" insert "**public**".

Page 2, line 5, strike "corporation".

Page 3, line 1, after "(1)" insert "**or more**".

Page 3, line 34, after "(1)" insert "**or more**".

Renumber all SECTIONS consecutively.

(Reference is to HB 1202 as introduced.)

and when so amended that said bill do pass.

Committee Vote: yeas 12, nays 0.

PORTER, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1223, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 2, after "(a)" insert "**This section does not apply to a person who euthanizes an injured, a sick, a homeless, or an unwanted domestic animal if:**

- (1) the person is employed by a humane society, an animal control agency, or a governmental entity operating an animal shelter or other animal impounding facility; and**
- (2) the person euthanizes the domestic animal in accordance with guidelines adopted by the humane society, animal control agency, or governmental entity operating the animal shelter or other animal impounding facility.**

(b)".

Page 1, line 4, reset in roman "Class A misdemeanor".

Page 1, line 4, delete "Class D".

Page 1, line 5, delete "felony".

Page 1, line 5, reset in roman "Class D".

Page 1, line 5, delete "Class C".

Page 1, line 5, after "if" insert ":

(1)".

Page 1, line 6, after "section" delete "." and insert "; or

(2) the torture, beating, or mutilation results in the death of the animal."

Page 1, line 7, strike "(b)" and insert " (c)".

(Reference is to HB 1223 as introduced.)

and when so amended that said bill do pass.

Committee Vote: yeas 10, nays 0.

DVORAK, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1228, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective date in SECTION 1 with "[EFFECTIVE UPON PASSAGE]".

Page 2, line 27, reset in roman "that".

Page 2, line 27, delete "following:".

Page 2, line 28, delete "(1) The".

Page 2, run in lines 27 through 28.

Page 2, line 30, reset in roman "(1)".

Page 2, line 30, delete "(A)".

Page 2, line 32, reset in roman "(2)".

Page 2, line 32, delete "(B)".

Page 2, line 34, reset in roman "(3)".

Page 2, line 34, delete "(C)".

Page 2, block indent lines 30 through 35.

Page 2, delete lines 36 through 39.

Page 3, after line 21, begin a new paragraph and insert:

"(j) For the purposes of this chapter, the lowest floor of a building, including a residence or abode, that is to be constructed in the one hundred (100) year floodplain of an area protected by a levee that is:

(1) inspected by; and

(2) found to be in good or excellent condition;

by the United States Army Corps of Engineers shall not be lower than the one hundred (100) year frequency flood elevation plus one (1) foot.

SECTION 2. **An emergency is declared for this act."**

(Reference is to HB 1228 as introduced.)

and when so amended that said bill do pass.

Committee Vote: yeas 11, nays 1.

LYTLE, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Human Affairs, to which was referred House Bill 1265, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 8, delete "when the person is" and insert "**ten (10) years after the person was last adjudicated a delinquent child."**

Page 1, delete line 9.

Page 1, line 14, delete "and".

Page 2, line 4, after ";" insert "**and**

(3) the person has not been convicted of a felony during the ten years since the person was last adjudicated a delinquent child;"

Page 2, line 6, delete "when the person" and insert "**ten (10) years after the person was last adjudicated a delinquent child."**

Page 2, delete line 7.

Page 2, line 18, delete "by" and insert "**in**".

Page 2, line 36, delete "when the person is" and insert "**ten (10)**

years after the person was last adjudicated a delinquent child."

Page 2, delete line 37.

Page 2, line 42, delete "and".

Page 3, line 4, after ";" insert "**and**

(3) finds that the person has not been convicted of a felony during the ten(10) years since the person was last adjudicated a delinquent child;"

Page 3, line 6, delete "when the person" and insert "**ten (10) years after the person was last adjudicated a delinquent child."**

Page 3, delete line 7.

Page 3, line 21, delete "by" and insert "**in**".

Page 3, line 35, delete "becomes twenty-two (22) years of age after June 30, 2002;" and insert "**was last adjudicated a delinquent child after June 30, 1992;"**

Page 3, line 37, delete "became twenty-two (22) years of age before July 1, 2002," and insert "**was last adjudicated a delinquent child before July 1, 1992,"**

(Reference is to HB 1265 as introduced.)

and when so amended that said bill do pass.

Committee Vote: yeas 12, nays 0.

SUMMERS, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1306, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 11 through 17.

Page 2, delete lines 1 through 7.

Page 2, line 8, delete "(c)" and insert "(b)".

Page 2, line 8, delete ":

Page 2, line 9, delete "(1)".

Page 2, line 9, delete ":

Page 2, line 10, delete "(A)".

Page 2, line 10, delete ":

Page 2, line 11, delete "(B)".

Page 2, line 13, delete ":

Page 2, line 15, delete ";" and "and" and insert ":

Page 2, run in lines 8 through 15.

Page 2, delete lines 16 through 19, begin a new paragraph and insert:

"SECTION 2. [EFFECTIVE UPON PASSAGE] (a) The environmental quality service council shall do the following:

(1) Consider policies for:

(A) protection of surface water quality;

(B) control of location of accumulations of water;

(C) water rights;

(D) agricultural land use;

(E) nonagricultural land use;

(F) flood control;

(G) natural habitat protection; and

(H) any other matter the council identifies as being involved in the implementation of a rational wetland management policy.

(2) Recommend principles for addressing state or local government management of and, with respect to state management, state agency responsibility for:

(A) land areas with wetland characteristics; and

(B) location and quantity of nonwetland surface water; not under the jurisdiction of the federal Clean Water Act (33 U.S.C. 1341).

(3) Recommend a framework for overall state policy on wetlands to implement the 1996 Indiana Wetland Conservation Plan with goals, objectives, and responsibilities, including recommendations on:

(A) as a long term strategy, the types and functions of wetlands that are valued in particular geographic areas; and

(B) the means for restoring, maintaining, and protecting

wetlands, including identification of agencies to be involved and the incentives to be offered.

(4) Recommend the appropriate role and components of banking programs as part of a mitigation rule to foster private initiatives to restore wetlands in the context of a rational statewide wetland strategy.

(5) Consider the options for statutory definition of "private pond" and explain the implications of each option.

(6) Submit its final report on the matters referred to in subdivisions (1) through (5) before November 1, 2002, to:

(A) the governor; and

(B) the executive director of the legislative services agency.

(b) A state agency or board may not:

(1) adopt or amend an administrative rule concerning the definition of "wetlands" or "isolated wetlands"; or

(2) enforce an administrative rule promulgated after January 1, 2002, that concerns the definition of "wetlands" or "isolated wetlands";

until the environmental quality service council has submitted its final report under subsection (a)(6) or May 1, 2003, whichever occurs first.

SECTION 3. [EFFECTIVE JULY 1, 1996 (RETROACTIVE)] The amendment of IC 13-11-2-265(b) by this act applies retroactively to July 1, 1996. By its amendment of IC 13-11-2-265(b), the general assembly intends that there be no substantive difference in the law as amended by this act and the law as it was constituted before the enactment of P.L.1-1996 (recodification of IC 13)."

Renumber all SECTIONS consecutively.

(Reference is to HB 1306 as introduced.)

and when so amended that said bill do pass.

Committee Vote: yeas 11, nays 0.

LYTLE, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1338, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, after line 19, begin a new paragraph and insert:

"SECTION 2. IC 16-18-2-242.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 242.9. "MTBE", for purposes of IC 16-44-2, has the meaning set forth in IC 16-44-2-2.4.

SECTION 3. IC 16-44-2-2.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2.4. As used in this chapter, "MTBE" refers to the gasoline additive methyl tertiary butyl ether.

SECTION 4. IC 16-44-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. (a) The inspections and tests made by the state department under this chapter shall be conducted in accordance with the methods outlined by the American Society for Testing and Materials.

(b) The inspections and tests as to gasoline, gasohol, and kerosene must reflect the following minimum specifications necessary for the approval of the product:

(1) Gasoline or gasohol:

(A) Corrosion Test) Method ASTM D-130. A clean copper strip may not show more than extremely slight discoloration when submerged in the gasoline for three (3) hours at one hundred twenty-two (122) degrees Fahrenheit.

(B) Distillation Range) Method ASTM D-86. When the thermometer reads one hundred sixty-seven (167) degrees Fahrenheit, not less than ten percent (10%) may be evaporated. When the thermometer reads two hundred eighty-four (284) degrees Fahrenheit, not less than fifty percent (50%) may be evaporated. When the thermometer

reads three hundred ninety-two (392) degrees Fahrenheit, not less than ninety percent (90%) may be evaporated. The residue may not exceed two percent (2%). Percent evaporated is found by adding the distillation loss to the amount collected in the receiver at each specification temperature.

(C) Sulphur) Method ASTM D-1266 or D-2622. Sulphur may not exceed twenty-five hundredths of one percent (0.25%).

(D) Vapor Pressure) Method ASTM D-4953, ASTM D-5191, or any other ASTM method to determine vapor pressure approved by the United States Environmental Protection Agency. For gasoline, the Reid vapor pressure at one hundred (100) degrees Fahrenheit may not exceed the following:

(i) Fifteen (15) pounds per square inch at the normal barometric pressure at the point of delivery during November, December, January, February, and March.

(ii) Fourteen (14) pounds per square inch during April and October.

(iii) Twelve (12) pounds per square inch during May, June, July, August, and September.

(E) For gasohol (a blend of gasoline and alcohol permitted under federal tax requirements), the vapor pressure may not exceed the following:

(i) Sixteen (16) pounds per square inch during November, December, January, February, and March.

(ii) Fifteen (15) pounds per square inch during April and October.

(iii) Thirteen (13) pounds per square inch during May, June, July, August, and September.

(F) After July 23, 2004, gasoline may not contain more than one-half percent (0.5%) of MTBE by volume.

(2) Kerosene:

(A) Flash Test) Method ASTM D-56. Flash point may not be lower than one hundred (100) degrees Fahrenheit.

(B) For the purpose of this chapter, any petroleum product designated by name or reference as "kerosene" must meet the federal specifications for kerosene VV-K-211 d in effect on March 1, 1977.

(c) Gasoline, gasohol, and kerosene products that do not comply with the minimum specifications described in subsection (b) may not be sold, offered for sale, or used in Indiana.

(d) Petroleum products other than gasoline, gasohol, or kerosene shall be inspected and tested by the methods as are necessary to determine the contents and characteristics of the product."

Renumber all SECTIONS consecutively.

(Reference is to HB 1338 as introduced.)

and when so amended that said bill do pass.

Committee Vote: yeas 11, nays 0.

LYTLE, Chair

Report adopted.

HOUSE BILLS ON SECOND READING

The following bills were called down by their respective authors, were read a second time by title, and, there being no amendments, were ordered engrossed: House Bills 1020, 1026, 1075, 1124, 1191, 1240, and 1302.

House Bill 1106

Representative Moses called down House Bill 1106 for second reading. The bill was read a second time by title.

HOUSE MOTION (Amendment 1106-1)

Mr. Speaker: I move that House Bill 1106 be amended to read as follows:

Page 11, line 20, delete "." and insert "except for that required by a political subdivision for onsite electrical, plumbing, or mechanical systems installation."

Page 11, between lines 28 and 29, begin a new paragraph and

insert:

"(c) This section does not prohibit:

- (1) a manufactured housing community owner;
- (2) a manufactured housing community manager; or
- (3) the employees of a person described in subdivision (1) or (2);

from providing maintenance to an installation."

Page 12, line 15, after "or" insert "a".

Page 12, line 26, delete "A" and insert "Notwithstanding IC 25-1-2, a".

Page 12, line 26, delete "two (2)" and insert "four (4)".

Page 14, line 17, after "or" insert "a".

(Reference is to HB 1106 as printed January 25, 2002.)

MOSES

Motion prevailed. The bill was ordered engrossed.

House Bill 1308

Representative Wolkins called down House Bill 1308 for second reading. The bill was read a second time by title.

HOUSE MOTION

Mr. Speaker: Pursuant to Rule 81, I call for a division of the question on House Bill 1308.

GRUBB

The Speaker ruled the motion was out of order because there was no question before the House at the time.

HOUSE MOTION

(Amendment 1308-2)

Mr. Speaker: I move that House Bill 1308 be amended to read as follows:

Page 1, line 17, strike ".".

Page 2, after line 7, begin a new paragraph and insert:

"SECTION 2. IC 33-19-1-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2.5. (a) As used in this section, "heavy speeding violation" means a criminal violation, an infraction, or an ordinance violation in which the operator of a truck having a declared gross weight greater than forty thousand (40,000) pounds exceeds the lawful speed limit.

(b) Notwithstanding IC 33-19-5 and IC 33-19-6, the clerk shall collect from every person who has committed a heavy speeding violation enhanced court fees and court costs.

(c) The enhanced court fees and court costs described in subsection (b) consist of two hundred fifty percent (250%) of the court fees and costs applicable to a person who has committed a criminal violation, an infraction, or an ordinance violation.

(d) The enhanced court fees and costs shall be distributed in the same manner and in the same proportion as regular court fees and costs.

SECTION 3. IC 34-28-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) A judgment of up to ten thousand dollars (\$10,000) may be entered for a violation constituting a Class A infraction.

(b) A judgment of up to one thousand dollars (\$1,000) may be entered for a violation constituting a Class B infraction.

(c) A judgment of up to five hundred dollars (\$500) may be entered for a violation constituting a Class C infraction.

(d) A judgment of up to twenty-five dollars (\$25) may be entered for a violation constituting a Class D infraction.

(e) A judgment:

- (1) up to the amount requested in the complaint; and
- (2) not exceeding any limitation under IC 36-1-3-8;

may be entered for an ordinance violation.

(f) A judgment of up to two hundred fifty percent (250%) of the amount described in subsections (a) through (d) shall be entered against a person who has committed a heavy speeding violation.

SECTION 4. IC 35-50-5-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. If a person has committed an

offense that constitutes a heavy speeding violation (IC 33-19-1-2.5), the court may impose a fine that is two hundred fifty percent (250%) of the amount described in IC 35-50-2 and IC 35-50-3.

SECTION 5. IC 36-1-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. (a) Subject to subsection (b), a unit does not have the following:

(1) The power to condition or limit its civil liability, except as expressly granted by statute.

(2) The power to prescribe the law governing civil actions between private persons.

(3) The power to impose duties on another political subdivision, except as expressly granted by statute.

(4) The power to impose a tax, except as expressly granted by statute.

(5) The power to impose a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power.

(6) The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.

(7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.

(8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute.

(9) The power to prescribe a penalty of imprisonment for an ordinance violation.

(10) The power to prescribe a penalty of a fine as follows:

(A) More than ten thousand dollars (\$10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air program under IC 13-17-12-6.

(B) More than six thousand two hundred fifty dollars (\$6,250) for a heavy speeding violation.

(C) More than two thousand five hundred dollars (\$2,500) for any other ordinance violation.

(11) The power to invest money, except as expressly granted by statute.

(12) The power to order or conduct an election, except as expressly granted by statute.

(b) A township does not have the following, except as expressly granted by statute:

(1) The power to require a license or impose a license fee.

(2) The power to impose a service charge or user fee.

(3) The power to prescribe a penalty."

(Reference is to HB 1308 as printed January 29, 2002.)

ALDERMAN

After discussion, Representative Alderman withdrew the motion.

There being no further amendments, the bill was ordered engrossed.

House Bill 1329

Representative Weinzapfel called down House Bill 1329 for second reading. The bill was read a second time by title.

HOUSE MOTION

(Amendment 1329-1)

Mr. Speaker: I move that House Bill 1329 be amended to read as follows:

Page 5, between lines 37 and 38, begin a new paragraph and insert:

"SECTION 11. IC 13-15-4-1, AS AMENDED BY P.L. 138-2000, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. Except as provided in sections 2, 3, and 6 of this chapter, the commissioner shall approve or deny an application filed with the department after July 1, 1995, within the following number of days:

(1) Three hundred sixty-five (365) days for an application concerning the following:

(A) A new hazardous waste or solid waste landfill.

(B) A new hazardous waste or solid waste incinerator.

(C) A major modification of a solid waste landfill.

- (D) A major modification of a solid waste incinerator.
- (E) A new hazardous waste treatment or storage facility.
- (F) A new Part B permit issued under 40 CFR 270 et seq. for an existing hazardous waste treatment or storage facility.
- (G) A Class 3 modification under 40 CFR 270.42 to a hazardous waste landfill.
- (2) Two hundred seventy (270) days for an application concerning the following:
 - (A) A Class 3 modification under 40 CFR 270.42 of a hazardous waste treatment or storage facility.
 - (B) A major ~~new~~ National Pollutant Discharge Elimination System permit.
- (3) One hundred eighty (180) days for an application concerning the following:
 - (A) A new solid waste processing or recycling facility.
 - (B) A minor ~~new~~ National Pollutant Discharge Elimination System individual permit.
 - (C) A permit concerning the land application of wastewater.
- (4) One hundred fifty (150) days for an application concerning a minor new National Pollutant Discharge Elimination System general permit.
- (5) One hundred twenty (120) days for an application concerning a Class 2 modification under 40 CFR 270.42 to a hazardous waste facility.
- (6) Ninety (90) days for an application concerning the following:
 - (A) A minor modification to a solid waste landfill or incinerator permit.
 - (B) A wastewater facility or water facility construction permit.
- (7) The amount of time provided for in rules adopted by the air pollution control board for an application concerning the following:
 - (A) An air pollution construction permit that is subject to 326 IAC 2-2 and 326 IAC 2-3.
 - (B) An air pollution facility construction permit (other than as defined in 326 IAC 2-2).
 - (C) Registration of an air pollution facility.
- (8) Sixty (60) days for an application concerning the following:
 - (A) A Class 1 modification under 40 CFR 270.42 requiring prior written approval, to a hazardous waste:
 - (i) landfill;
 - (ii) incinerator;
 - (iii) treatment facility; or
 - (iv) storage facility.
 - (B) Any other permit not specifically described in this section for which the application fee exceeds one hundred dollars (\$100) and for which a time frame has not been established under section 3 of this chapter.

SECTION 12. IC 13-15-4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: Sec. 12. (a) For purposes of this section, if:

- (1) the deadline for approval or denial of a permit application under section 1 of this chapter precedes July 1, 2003; and
 - (2) the commissioner does not approve or deny the permit application before the deadline;
- the deadline for approval or denial is considered to be July 1, 2003.
- (b) An applicant may ~~not~~ receive a refund of a permit application fee if:

- (1) the permit application concerned the renewal of a permit;
 - (2) the expiration date of the permit for which renewal is sought is extended under IC 13-15-3-6; and
 - (3) the applicant applies in writing to the department for a refund.
- (c) The amount of a refund under this section for a calendar year in which a fee is assessed under IC 13-18-20-13 is the amount determined in STEP FIVE of the following formula:

STEP ONE: Determine the later of:

- (A) January 1 of that calendar year; and
- (B) the deadline for approval or denial of the permit

application under section 1 of this chapter if the deadline falls in that calendar year.

STEP TWO: Determine the earlier of:

- (A) the date of approval or denial of the permit application under section 1 of this chapter if that date falls in that calendar year; and
- (B) December 31 of that calendar year.

STEP THREE: Determine the number of days after the date determined under STEP ONE and before the date determined under STEP TWO.

STEP FOUR: Multiply the amount determined under STEP THREE by the amount of the fee assessed in that calendar year under IC 13-18-20-13.

STEP FIVE: Multiply the product determined under STEP FOUR by seven one hundredths percent (.07%)."

Page 6, between lines 9 and 10, begin a new paragraph and insert: "SECTION 14. IC 13-15-11-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. Before September 1 of each even-numbered year, the department shall report to the environmental quality service council:

- (1) the department's proposed distribution of funds among the programs referred to in section 1 of this chapter for the current state fiscal year;
- (2) the department's rationale for the proposed distribution;
- (3) any difference between:
 - (A) the proposed distribution; and
 - (B) the distribution made by the department in the immediately preceding state fiscal year; and
- (4) the results of an independent audit of the correlation between:

- (A) the distribution made by the department with respect to; and
- (B) the department's actual expenses related to; each program referred to in section 1 of this chapter in the immediately preceding state fiscal year."

Page 21, after line 9, begin a new paragraph and insert: "SECTION 38. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

(Reference is to HB 1329 as printed January 29, 2002.)

AVERY

Motion prevailed. The bill was ordered engrossed.

House Bill 1083

Representative Kersey called down House Bill 1083 for second reading. The bill was read a second time by title.

HOUSE MOTION
(Amendment 1083-1)

Mr. Speaker: I move that House Bill 1083 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 33-4-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) The Shelby circuit court has concurrent, coordinate, and coextensive jurisdiction with the Shelby superior court in the following:

- (1) All civil actions and proceedings, at law or in equity.
- (2) Divorce and special statutory proceedings and actions.
- (3) Probate matters and proceedings.
- (4) Actions by and against administrators, executors, guardians, trustees, and other fiduciaries and personal representatives, including will contests, actions to resist probate of wills, and claims against estates.
- (5) Criminal proceedings, actions and matters.

(b) The Shelby circuit court has concurrent, coordinate, and coextensive jurisdiction with the Shelby superior court in all actions and proceedings, at law or in equity, whether criminal, civil, divorce, or other statutory matters, that are venued from other counties and from any courts in other counties in Indiana.

(c) The Shelby circuit court ~~does not have~~ has concurrent,

coordinate, and coextensive jurisdiction to file, hear, and determine juvenile proceedings or actions or other matters cognizable in the juvenile courts in Indiana. All juvenile jurisdiction is vested exclusively in the Shelby superior court, with Shelby superior court No. 1 in juvenile matters and proceedings.

(d) The Shelby circuit court has concurrent, coordinate, and coextensive jurisdiction with the superior court of the county in all civil, criminal, and statutory actions and proceedings appealed from the board of commissioners, and any other board, inferior court, commission, agency, or officer in the county.

(e) In the exercise of its criminal jurisdiction, the circuit court may issue search warrants and warrants for arrest and any other legal process and find and determine all matters and facts necessary to the validity of warrants or other process under the Constitution of the United States, the Constitution of the State of Indiana, and the laws of this state.

(f) The circuit court has concurrent and coextensive jurisdiction with the superior court in any and all other matters, proceedings, acts, powers, and duties that are proper to be filed, tried, and determined in circuit courts and superior courts of general jurisdiction and are not specifically mentioned in this section.

SECTION 2. IC 33-5-39-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) The courts have the same jurisdiction as the Shelby circuit court, except that **only** Shelby superior court No. 1 has ~~exclusive juvenile jurisdiction in the county~~ **concurrent, coordinate, and coextensive jurisdiction with the Shelby circuit court in juvenile matters and proceedings.**

(b) Shelby superior court No. 2 has a standard small claims and misdemeanor division."

Renumber all SECTIONS consecutively.

(Reference is to HB 1083 as printed January 29, 2002.)

HERNDON

Motion prevailed. The bill was ordered engrossed.

ENGROSSED HOUSE BILLS ON THIRD READING

Engrossed House Bill 1108

Representative Porter called down Engrossed House Bill 1108 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning education.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 68: yeas 93, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators Lubbers, Breaux, and Rogers.

Engrossed House Bill 1161

Representative Welch called down Engrossed House Bill 1161 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning education.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 69: yeas 93, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators Miller and Breaux.

Engrossed House Bill 1171

Representative Avery called down Engrossed House Bill 1171 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 70: yeas 95, nays 0. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators Gard and Broden.

Engrossed House Bill 1176

Representative Bottorff called down Engrossed House Bill 1176 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 71: yeas 92, nays 1. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators Skillman and Lewis.

Engrossed House Bill 1221

Representative T. Adams called down Engrossed House Bill 1221 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 72: yeas 61, nays 31. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators R. Meeks and Craycraft.

Representative Porter was excused.

Engrossed House Bill 1259

Representative Crawford called down Engrossed House Bill 1259 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning health.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 73: yeas 93, nays 1. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsors: Senators Gard and Blade.

Representative Porter was present; Representative Dillon was excused.

Engrossed House Bill 1264

Representative Porter called down Engrossed House Bill 1264 for third reading:

A BILL FOR AN ACT to amend the Indiana Code concerning education.

The bill was read a third time by sections and placed upon its passage. The question was, Shall the bill pass?

Roll Call 74: yeas 65, nays 28. The bill was declared passed. The question was, Shall the title of the bill remain the title of the act? There being no objection, it was so ordered. The Clerk was directed to inform the Senate of the passage of the bill. Senate sponsor: Senator Hume.

With the consent of the House, the Speaker returned to House Bills on Second Reading.

HOUSE BILLS ON SECOND READING

House Bill 1355

Representative Bauer called down House Bill 1355 for second reading. The bill was read a second time by title. There being no amendments, the bill was ordered engrossed.

RESOLUTIONS ON FIRST READING

House Concurrent Resolution 27

Representatives Ayres, Cheney, C. Brown, Kuzman, and Budak introduced House Concurrent Resolution 27:

A CONCURRENT RESOLUTION urging the Department of Local Government Finance to delay approving tax rates for all units in Porter County until March 15, 2002.

Whereas, Indiana law provides that the Department of Local Government Finance is responsible for certifying tax rates, levies and budgets for all local units of government;

Whereas, IC 6-1.1-17-16 provides that the DLGF is to certify all rates and approve all budgets by February 15 of each year for taxes payable in the following year;

Whereas, Those budgets are supported by the payment of real and personal property taxes by individual taxpayers within the respective taxing districts;

Whereas, Porter County is currently suffering a severe financial crisis because its largest taxpayer, Bethlehem Steel Corporation, declared bankruptcy on October 15, 2001, failed to make its November 2001 property tax payments and is projected not to make any property tax payments in 2002, thus causing the County a deficit of approximately \$31,000,000;

Whereas, There have been several legislative proposals to deal with the revenue shortfall in Porter County, but there can be no projections made as to whether any of these proposals will pass both houses by February 15;

Whereas, The Second Regular Session of the Indiana General Assembly is not scheduled to conclude before March 15, 2002; thus legislative action involving Porter County may be taken up until that date;

Whereas, The statute is silent regarding possible ramifications of the DLGF not certifying a tax rate for Porter County by February 15;

Whereas, Any legislation which passes between February 15 and March 15 might impact the tax rates and budgets in Porter County independent of action taken by the DLGF;

Whereas, The current financial crisis facing Porter County as the result of the Bethlehem Steel bankruptcy is of an extraordinary nature which requires creative assistance from the State;

Whereas, The State's delay in certifying tax rates and budgets for Porter County will allow additional time which could result in the passage of legislation which would provide meaningful financial assistance to Porter County;

Whereas, This request is of a non-binding nature; and

Whereas, The immediate critical financial crisis facing Porter County calls for this action: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:

SECTION 1. That the Department of Local Government Finance is hereby requested to delay certification of tax rates and budgets for Porter County until March 15, 2002.

SECTION 2. That the Principal Clerk of the House of Representatives is directed to transmit a copy of this resolution to the Department of Local Government Finance and all taxing units of Porter County.

The resolution was read a first time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution. Senate sponsors: Senators Landske, Antich, and Alexa.

REPORTS FROM COMMITTEES

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1153, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, delete line 41.

Page 4, line 1, delete "(3)" and insert "(2)".

Page 4, line 6, delete "(b)(3)" and insert "(b)(2)".

(Reference is to HB 1153 as introduced and as amended by the committee report of the House committee on education adopted January 30, 2002.)

and when so amended that said bill do pass.

Committee Vote: yeas 25, nays 0.

BAUER, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1258, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the committee report of the House committee on public health adopted January 24, 2002.

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning Medicaid and to make an appropriation.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 12-15-14.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 14.5. Health Facility Fee

Sec. 1. As used in this chapter, "bed" means an occupied bed in a health facility.

Sec. 2. As used in this chapter, "fee" refers to a fee imposed under this chapter.

Sec. 3. As used in this chapter, "health facility" means a health facility that is licensed under IC 16-28.

Sec. 4. Subject to section 9 of this chapter, a daily fee is imposed against a health facility for each day that the health facility is operated after June 30, 2002, and before July 1, 2004.

Sec. 5. The amount of the fee imposed under this chapter is equal to the number of beds in a health facility on a particular day multiplied by four dollars (\$4).

Sec. 6. The office may determine the manner of payment of the fee.

Sec. 7. A health facility shall pay a fee to the office not more than thirty (30) days after receiving notice that the payment is due.

Sec. 8. If a health facility does not pay a fee within the time allowed under section 7 of this chapter, the office may do the following:

(1) Deduct the amount of the fee from any Medicaid reimbursement otherwise due to the health facility.

(2) If a health facility is not certified to participate in the Medicaid program, charge interest on the unpaid fees at an annual interest rate determined by the office.

(3) Impose any other penalty that the office determines is appropriate.

(4) Take action to collect a fee imposed by this chapter.

Sec. 9. (a) The fees required by this chapter do not apply to any day before the date designated by the federal government in its approval as the first day that federal financial participation funds may be used to match the fees collected under this chapter.

(b) If federal financial participation funds to match the fees collected under this chapter become unavailable under federal law, the authority of the office to assess a fee under this chapter terminates on the date that a federal statute, regulation, or interpretation that eliminates matching federal financial

participation funds takes effect or the office loses approval for matching federal financial participation funds.

Sec. 10. Money collected from fees imposed under this chapter shall be used for expenditures of the state Medicaid program.

Sec. 11. The office may adopt rules under IC 4-22-2 to carry out this chapter.

Sec. 12. This chapter expires August 1, 2004.

SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.

(b) The office may adopt temporary rules in the manner provided for the adoption of emergency rules under IC 4-22-2-37.1 to implement IC 12-15-14.5, as added by this act. A temporary rule adopted under this SECTION expires on the earliest of the following:

(1) The date that another temporary rule adopted under this SECTION supersedes the prior temporary rule.

(2) The date that a permanent rule adopted under IC 4-22-2 supersedes a temporary rule adopted under this SECTION.

(3) July 1, 2003.

(c) The office shall, as soon as practicable, seek approval for federal financial participation funds to match the fees collected under IC 12-15-14.5, as added by this act.

SECTION 3. An emergency is declared for this act.

(Reference is to HB 1258 as introduced and as amended by the committee report of the House committee on public health adopted January 24, 2002.)

and when so amended that said bill do pass.

Committee Vote: yeas 21, nays 1.

BAUER, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1293, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 12-7-2-22, AS AMENDED BY P.L.272-1999, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 22. "Board" means the following:

(1) For purposes of IC 12-10-10 and IC 12-10-11, the community and home options to institutional care for the elderly and disabled board established by IC 12-10-11-1.

(2) For purposes of IC 12-12-7-5, the meaning set forth in IC 12-12-7-5(a).

(3) For purposes of IC 12-15-35, the meaning set forth in IC 12-15-35-2.

(4) For purposes of IC 12-15-35.5, the meaning set forth in IC 12-15-35.5-1.

(5) For purposes of IC 12-17-2-36, the meaning set forth in IC 12-17-2-36(a).

SECTION 2. IC 12-15-35-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 28. The board has the following duties:

(1) The adoption of rules to carry out this chapter, in accordance with the provisions of IC 4-22-2 and subject to any office approval that is required by the federal Omnibus Budget Reconciliation Act of 1990 under Public Law 101-508 and its implementing regulations.

(2) The implementation of a Medicaid retrospective and prospective DUR program as outlined in this chapter, including the approval of software programs to be used by the pharmacist for prospective DUR and recommendations concerning the provisions of the contractual agreement between the state and any other entity that will be processing and reviewing Medicaid drug claims and profiles for the DUR program under this chapter.

(3) The development and application of the predetermined

criteria and standards for appropriate prescribing to be used in retrospective and prospective DUR to ensure that such criteria and standards for appropriate prescribing are based on the compendia and developed with professional input with provisions for timely revisions and assessments as necessary.

(4) The development, selection, application, and assessment of interventions for physicians, pharmacists, and patients that are educational and not punitive in nature.

(5) The publication of an annual report that must be subject to public comment before issuance to the federal Department of Health and Human Services and to the Indiana legislative council by December 1 of each year.

(6) The development of a working agreement for the board to clarify the areas of responsibility with related boards or agencies, including the following:

(A) The Indiana board of pharmacy.

(B) The medical licensing board of Indiana.

(C) The SURS staff.

(7) The establishment of a grievance and appeals process for physicians or pharmacists under this chapter.

(8) The publication and dissemination of educational information to physicians and pharmacists regarding the board and the DUR program, including information on the following:

(A) Identifying and reducing the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and recipients.

(B) Potential or actual severe or adverse reactions to drugs.

(C) Therapeutic appropriateness.

(D) Overutilization or underutilization.

(E) Appropriate use of generic drugs.

(F) Therapeutic duplication.

(G) Drug-disease contraindications.

(H) Drug-drug interactions.

(I) Incorrect drug dosage and duration of drug treatment.

(J) Drug allergy interactions.

(K) Clinical abuse and misuse.

(9) The adoption and implementation of procedures designed to ensure the confidentiality of any information collected, stored, retrieved, assessed, or analyzed by the board, staff to the board, or contractors to the DUR program that identifies individual physicians, pharmacists, or recipients.

(10) The implementation of additional drug utilization review with respect to drugs dispensed to residents of nursing facilities shall not be required if the nursing facility is in compliance with the drug regimen procedures under 410 IAC 16.2-3-8 and 42 CFR 483.60.

(11) The consultation and development with the office of a preferred drug formulary in accordance with IC 12-15-35.5.

SECTION 3. IC 12-15-35.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 35.5. Preferred Drug Formulary

Sec. 1. As used in this chapter, "board" refers to the drug utilization review board established by IC 12-15-35-19.

Sec. 2. (a) The office in consultation with the board may develop, establish, and implement a preferred drug formulary in accordance with 42 U.S.C. 1396r-8.

Sec. 3. (a) In establishing the formulary under section 2 of this chapter, the office may negotiate supplemental rebates from manufacturers that are in addition to rebates required under Title XIX of the Social Security Act.

(b) A supplemental rebate under subsection (a) must be at least ten percent (10%) of the average manufacturer price (as defined in 42 U.S.C. 1936) on the last day of a quarter unless:

(1) the federal rebate; or

(2) the federal rebate plus the supplemental rebate; is more than twenty-four percent (24%) of the average manufacturer price.

(c) A supplemental rebate negotiated by the office under this chapter does not have an upper limit.

Sec. 4. The board or the office may determine that a specific product that is a brand-name drug or generic drug is competitive at a lower rebate percentage.

Sec. 5. An agreement by a drug manufacturer or labeler to pay the minimum supplemental rebate shall guarantee that the specific product of the manufacturer or labeler will be considered by the board and the office for inclusion in the preferred drug formulary; however, a product of the drug manufacturer or labeler that agrees to pay the minimum supplemental rebate for a product is not guaranteed to be placed on the preferred drug formulary.

Sec. 6. A determination by the office of the drugs included on the preferred drug formulary must be based on the following:

- (1) The clinical efficacy of the drug.
- (2) Recommendations by the board.
- (3) The price of competing products less the amount of any federal or state rebate.

Sec. 7. The office may contract with a person to conduct negotiations for supplemental rebates.

Sec. 8. Supplemental rebates may include any of the following:

- (1) Cash rebates.
- (2) Program benefits that offset Medicaid expenditures, including any of the following:
 - (A) Disease management programs.
 - (B) Drug product donation programs.
 - (C) Drug utilization control programs.
 - (D) Prescriber and beneficiary counseling and education.
 - (E) Fraud and abuse initiatives.
 - (F) Other services or administrative investments that ensure savings to the Medicaid program in the year the rebate reduction is included.

Sec. 9. The office may adopt rules under IC 4-22-2 necessary to implement this chapter."

Page 2, delete lines 30 through 32, begin a new paragraph and insert:

"Sec. 2. "Average wholesale price" means the average of the following:

- (1) The wholesale price assigned by a drug manufacturer to a specific commodity that is listed in a nationally recognized drug pricing file.
- (2) Supplemental rebates for Medicaid programs above those required under 42 U.S.C. 1396r-8.
- (3) Discount prices or rebates for the Indiana prescription drug program established under IC 12-10-16.
- (4) Rebates and discounts negotiated for other state programs that pay for or acquire prescription drugs."

Page 3, between lines 7 and 8, begin a new line block indented and insert:

"(4) Insured or self funded employee welfare benefit plans described in the federal Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.) that provide prescription drug benefits to residents of Indiana."

Page 3, line 38, delete "may" and insert "shall".

Page 4, delete lines 18 through 28, begin a new paragraph and insert:

"(b) When negotiating the amount of the rebate, the state department must consider the following:

- (1) The rebate calculated under the federal Medicaid Rebate Program under 42 U.S.C. 1396r-8.
- (2) The price provided to covered entities under 42 U.S.C. 256b.
- (3) The national and state averages of all wholesale prices available or negotiated for prescription drugs.
- (4) Any other information on prescription drug prices and price discounts.

(c) The state department and all other units of state government that pay for or acquire prescription drugs shall use their combined knowledge, information, data, and universal best efforts at the same time and same place to maximize the state's ability to obtain a rebate amount that is at least equal to the amount of any discount, rebate, or price reduction for prescription drugs that is provided to the federal government or

any other governmental entity that purchases prescription drugs."

Page 5, line 16, after "the" insert "best".

Page 5, delete lines 17 through 18.

Page 5, line 19, delete "THREE" and insert "TWO".

Page 5, between lines 27 and 28, begin a new paragraph and insert:

"(c) In establishing a formula under this section, the state department shall include three (3) varying levels of pricing as follows:

- (1) Uninsured participants shall receive the lowest pricing.
- (2) Underinsured participants, including individuals and families, shall receive pricing above the pricing provided to participants under subdivision (1) and less than the pricing provided to participants under subdivision (3).
- (3) Participants not described in subdivision (1) or (2) shall receive the highest pricing."

Page 8, after line 25, begin a new paragraph and insert:

"SECTION 11. [EFFECTIVE JULY 1, 2002] Recognizing that the state currently acts as a prescription benefits manager for a variety of health plans and assistance programs, IC 16-42.5 is enacted to cover new populations by expanding the state's role as a participant in the free marketplace as it relates to the prescription drug marketplace, just as health maintenance organizations and other large entities participate to negotiate voluntary rebates from drug companies, and use the funds to make prescription drugs more affordable to the state Medicaid program and to state residents. The intent of IC 16-42.5, as added by this act, is to improve public health and welfare, promote the economic strength of the state's citizens, and directly and indirectly benefit the state Medicaid program. IC 16-42.5 is enacted recognizing that the state government is the only agent that, as a practical matter, can be effective as a market participant on behalf of all the state's residents who are uninsured, underinsured, Medicaid participants, or taxpayers.

SECTION 12. [EFFECTIVE JULY 1, 2002] (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established under IC 12-8-6-1.

(b) Before September 1, 2002, the office shall apply to the United States Department of Health and Human Services for approval of any waiver necessary to develop a preferred drug formulary established in IC 12-15-35.5, as added by this act, and in accordance with 42 U.S.C. 1396r-8.

(c) The office may not implement the waiver until the office files an affidavit with the governor attesting that the federal waiver applied for under this SECTION is in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver is approved.

(d) If the office receives a waiver under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection (c), the office shall implement the waiver not more than sixty (60) days after the governor receives the affidavit."

Renumber all SECTIONS consecutively.

(Reference is to HB 1293 as introduced.)

and when so amended that said bill do pass.

Committee Vote: yeas 18, nays 7.

BAUER, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1317, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 2 with "[EFFECTIVE JANUARY 1, 2003]".

Page 1, delete lines 6 through 11, begin a new line block indented and insert:

"(1) sixteen cents (\$0.16) per gallon on gasoline used in Indiana after December 31, 2002, and before January 1,

2004; and
 (2) seventeen cents (\$0.17) per gallon on gasoline used in Indiana after December 31, 2003."

Page 2, delete lines 6 through 40, begin a new line block indented and insert:

"(1) One sixteenth (1/16) of the taxes that are collected under this chapter after December 31, 2002, and before January 1, 2004.

(2) One seventeenth (1/17) of the taxes that are collected under this chapter after December 31, 2003.

(b) The administrator shall transfer the following amounts of the taxes that are collected under this chapter to the motor vehicle highway account:

(1) One sixteenth (1/16) of the taxes that are collected under this chapter after December 31, 2002, and before January 1, 2004.

(2) One seventeenth (1/17) of the taxes that are collected under this chapter after December 31, 2003."

Page 2, line 41, delete "(e)" and insert "(c)".

Page 2, line 42, delete "(d)" and insert "(b)".

Page 3, line 17, delete "(f)" and insert "(d)".

Page 3, line 18, delete "(e)" and insert "(c)".

Page 3, line 20, delete "(e)" and insert "(c)".

Page 3, line 22, delete "(g)" and insert "(e)".

Page 3, line 22, delete "(e)" and insert "(c)".

Page 3, delete lines 25 through 42, begin a new paragraph and insert:

"SECTION 3. IC 32-11-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. The costs of the proceedings shall be paid by the plaintiff, except that in case of trial the additional costs thereby caused shall be paid as the court shall adjudge. However, if, in case of trial, the amount of damages awarded to the defendant by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the plaintiff under section 8.1 of this chapter, the court shall allow the defendant his litigation expenses in an amount not to exceed ~~twenty-five hundred five thousand~~ **five thousand** dollars ~~(\$2,500)~~ **(\$5,000)**."

Delete page 4.

Renumber all SECTIONS consecutively.

(Reference is to HB 1317 as introduced.)

and when so amended that said bill do pass.

Committee Vote: yeas 21, nays 5.

BAUER, Chair

Report adopted.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Joint Resolution 9, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said resolution do pass.

Committee Vote: yeas 24, nays 0.

BAUER, Chair

Report adopted.

OTHER BUSINESS ON THE SPEAKER'S TABLE

HOUSE MOTION

Mr. Speaker: I move that when we do adjourn, we adjourn until Monday, February 4, 2002 at 11:00 a.m.

GRUBB

Motion prevailed.

PETITION TO CHANGE VOTING RECORD

Mr. Speaker: Pursuant to House Rule 75, I hereby petition to change my voting record on the third reading of Engrossed House Bill 1221, Roll Call 72, on January 31, 2002. In support of this petition, I submit the following reason:

"I was present and on the House floor, but when I attempted to

vote, I was unable to vote when I intended to vote Nay."

CHERRY

There being a constitutional majority voting in favor of the petition, the petition was adopted.

PETITION TO CHANGE VOTING RECORD

Mr. Speaker: Pursuant to House Rule 75, I hereby petition to change my voting record on the third reading of Engrossed House Bill 1221, Roll Call 72, on January 31, 2002. In support of this petition, I submit the following reason:

"I was present and in my seat, but when I attempted to vote, I inadvertently pushed the Nay button when I intended to vote Yea."

McCLAIN

There being a constitutional majority voting in favor of the petition, the petition was adopted. [*Journal Clerk's note: this changes the vote tally for Roll Call 72 to 60 yeas, 31 nays. The corrected roll call is printed with this Journal.*]

HOUSE MOTION

Mr. Speaker: I move that Representative Foley be added as coauthor of House Bill 1012.

HERRELL

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative Steele be added as coauthor of House Bill 1013.

DAY

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative T. Brown be added as coauthor of House Bill 1029.

GRUBB

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that House Rule 106.1 be suspended for the purpose of adding more than three coauthors and that Representatives Steele, Goodin, and T. Adams be added as coauthors of House Bill 1051.

DUNCAN

The motion, having been seconded by a constitutional majority and carried by a two-thirds vote of the members, prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative Crooks be added as coauthor of House Bill 1105.

DUNCAN

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative Kuzman be added as coauthor of House Bill 1129.

ALDERMAN

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that House Rule 106.1 be suspended for the purpose of adding more than three coauthors and that Representative Friend be added as coauthor of House Bill 1158.

HASLER

The motion, having been seconded by a constitutional majority and carried by a two-thirds vote of the members, prevailed.

HOUSE MOTION

Mr. Speaker: I move that House Rule 106.1 be suspended for the purpose of adding more than three coauthors and that Representatives T. Adams, Aguilera, Alderman, Atterholt, Avery, Ayres, Bardon, Behning, Bischoff, Bodiker, Borrer, Bosma, Bottorff, T. Brown, Buck, Buell, Burton, Cheney, Cherry, Cochran, Cook, Crawford, Crooks, Crosby, Day, Dickinson, Dillon, Dobis, Dumezich, Duncan, Espich, Foley, Frenz, Friend, Frizzell, Fry, GiaQuinta, Goodin, Gregg, Grubb, Hasler, Herndon, Herrell, Hinkle, Hoffman, Kersey, Klinker, Kromkowski, Kruse, Kuzman, Leuck, Liggett, J. Lutz, Mahern, Mangus, McClain, Mock, Moses, Munson, Murphy, Noe, Pelath, Pond, Porter, Reske, Richardson, Ripley, Saunders, Scholer, M. Smith, V. Smith, Steele, Stevenson, Stilwell, Summers, Thompson, Tincher, Torr, Turner, Ulmer, Weinzapfel, Whetstone, Wolkins, D. Young, and Yount be added as coauthors of House Bill 1252.

BECKER

The motion, having been seconded by a constitutional majority and carried by a two-thirds vote of the members, prevailed.

HOUSE MOTION

Mr. Speaker: I move that House Rule 106.1 be suspended for the purpose of adding more than three coauthors and that Representative Leuck be added as coauthor of House Bill 1306.

WOLKINS

The motion, having been seconded by a constitutional majority and carried by a two-thirds vote of the members, prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative D. Young be removed as coauthor of House Bill 1345.

PELATH

Motion prevailed.

HOUSE MOTION

Mr. Speaker: I move that House Rule 106.1 be suspended for the purpose of adding more than three coauthors and that Representatives T. Adams, Aguilera, Alderman, Ayres, Becker, Behning, Bischoff, Bodiker, Borrer, Bosma, Bottorff, C. Brown, T. Brown, Buck, Budak, Buell, Burton, Cherry, Cochran, Cook, Crooks, Crosby, Dillon, Dobis, Dumezich, Duncan, Espich, Foley, Frenz, Friend, Frizzell, Fry, GiaQuinta, Goodin, Grubb, Herndon, Herrell, Hoffman, Kersey, Klinker, Kruse, Kuzman, Leuck, Liggett, J. Lutz, Mangus, McClain, Munson, Murphy, Noe, Pelath, Pond, Porter, Reske, Richardson, Ripley, Saunders, Scholer, M. Smith, V. Smith, Steele, Stevenson, Stilwell, Sturtz, Summers, Thompson, Tincher, Torr, Turner, Welch, Whetstone, Wolkins, D. Young, and Yount be added as coauthors of House Joint Resolution 1.

ULMER

The motion, having been seconded by a constitutional majority and carried by a two-thirds vote of the members, prevailed.

HOUSE MOTION

Mr. Speaker: I move that Representative Bischoff be added as cosponsor of Engrossed Senate Bill 138.

WELCH

Motion prevailed.

On the motion of Representative Bodiker the House adjourned at 12:50 p.m., this thirty-first day of January, 2002, until Monday, February 4, 2002, at 11:00 a.m.

JOHN R. GREGG

Speaker of the House of Representatives

LEE ANN SMITH

Principal Clerk of the House of Representatives